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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,182	07/25/2003	Andreas Seidel	PO7675/LeA 36,173	3849

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EXAMINER

SZEKELY, PETER A

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/627,182	Applicant(s) SEIDEL ET AL.	
	Examiner Peter Szekely	Art Unit 1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-17 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/1/03, 7/25/03</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No.

6,767,943, claims 1-12 of U.S. Patent No. 6,727,301, claims 1-13 of U.S. Patent No.

6,713,544, claims 1-20 of U.S. Patent No. 6,596,794, claims 1-6 of U.S. Patent No.

6,590,015 and claims 1-14 of U.S. Patent No. 6,583,204. Although the conflicting claims are not identical, they are not patentably distinct from each other because the ingredients are the same and the concentration ranges overlap.

3. Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of copending Application No. 10/007,465. Although the conflicting claims are not identical, they are not patentably distinct from each other because the ingredients are the same and the concentration ranges overlap.

Art Unit: 1714

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Eckel et al. 2002/0115761, Eckel et al. 6,767,943, Eckel et al. 6,727,301, Eckel et al. 6,713,544, Eckel et al. 6,596,794, Eckel et al. 6,590,015, Eckel et al. 6,583,204 or Zobel et al. 6,528,561.

7. Eckel et al. ('761) disclose polycarbonate, impact modifier, polyalkylene terephthalate (PAT) and phosphorus compound in claim 1, identify the impact modifiers as graft polymers in paragraphs 0055-0078 and describe the oligomeric phosphate in paragraphs 0098-0109. Eckel et al. ('943) teach applicants' composition in claims 1-9 and 14. Eckel et al. ('301) recite the claimed composition in claims 1-7 and 9-10. Eckel et al. ('544) divulge the claimed composition in claims 9-13 and column 11, lines 47-65.

Art Unit: 1714

Eckel et al. ('794) reveal the claimed composition in claims 1-12, 15, 16, 18 and 19.

See also from column 8, line 40, to column 9, line 39. Eckel et al. ('015) present the claimed composition in claims 1-6. Eckel et al. ('204) display the claimed composition in claims 1-5, 7-10 and 12-14. Zobel et al. describe polycarbonate, graft polymer, PAT and fluorinated polyolefin in claims 1-6, 8-10 and 12 and oligomeric phosphates from column 12, line 42, to column 13, line 30. All properties are inherent in the composition. Applicants' claims are not novel.

8. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Eckel et al. 6,417,256 or Matsumoto et al. 6,174,943.

9. Eckel et al. ('256) discuss polycarbonate, and phosphorus compound in claim 1, ABS, PAT and fluorinated polyolefins in claim 5, other additives in claim 6, molded article in claim 10, graft polymers from column 4, line 61, to column 7, line 41, PAT from column 8, line 48, to column 9, line 37, oligomeric phosphates from column 9, line 44, to column 10, line 3 and column 10, lines 30-45. Matsumoto et al. relate polycarbonate, polyester and phosphorus compound in claims 1, 4, 5 and 8, bisphenol A-bis(dicresyl phosphate) in column 9, lines 32-45 and graft copolymer from column 11, line 20, to column 12, line 4. For PTFE see the Tables. All properties are inherent in the composition. Applicants' claims are not novel.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 1714

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckel et al. 2002/0115761, Eckel et al. 6,767,943, Eckel et al. 6,727,301, Eckel et al. 6,713,544, Eckel et al. 6,596,794, Eckel et al. 6,590,015, Eckel et al. 6,583,204, Zobel et al. 6,528,561, Eckel et al. 6,417,256 or Matsumoto et al. 6,174,943.

13. All references have been discussed already. It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to select PAT and the oligomeric Bisphenol A bridged phosphate from a list of equivalents.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is (571) 272-1124. The examiner can normally be reached on 7:00 a.m.-5:30 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone

Art Unit: 1714

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Peter Szekely
Primary Examiner
Art Unit 1714

P.S.
3/11/05